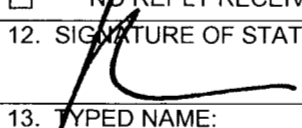
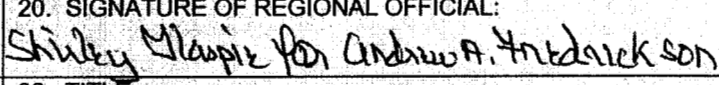


TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: <div style="text-align: center;">04 - 11</div>	2. STATE: <div style="text-align: center;">TEXAS</div>
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
4. PROPOSED EFFECTIVE DATE: <div style="text-align: center;">September 1, 2004</div>		5. TYPE OF PLAN MATERIAL (Circle One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT	
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: Title XIX, Social Security Act; and 42 CFR 433.36		7. FEDERAL BUDGET IMPACT: SEE ATTACHMENT a. FFY 2005 \$ (50,912) 356,763 b. FFY 2006 \$ (\$1,270,978) (1,039,926)	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: SEE ATTACHMENT		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): SEE ATTACHMENT	
10. SUBJECT OF AMENDMENT: This amendment adds the Medicaid Estate Recovery Program operated in accordance with requirements of 42 CFR 433.36 for estate recoveries.			
<i>Texas (04-11)</i> <i>approved: 09/23/04</i> <i>effective: 09/01/04</i>			
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
<input checked="" type="checkbox"/> OTHER, AS SPECIFIED: Sent to Governor's Office this date. Comments, if any, will be forwarded upon receipt.			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: Jason Cooke State Medicaid/CHIP Director Post Office Box 13247 Austin, Texas 78711	
13. TYPED NAME: Jason Cooke		14. TITLE: State Medicaid/CHIP Director	
15. DATE SUBMITTED: May 4, 2004		17. DATE RECEIVED: 7 MAY 2004	
FOR REGIONAL OFFICE USE ONLY			
18. DATE APPROVED: 23 SEPTEMBER 2004		19. EFFECTIVE DATE OF APPROVED MATERIAL: 1 SEPTEMBER 2004	
PLAN APPROVED - ONE COPY ATTACHED			
20. SIGNATURE OF REGIONAL OFFICIAL: 		21. TYPED NAME: ANDREW A. FREDRICKSON	
22. TITLE: ASSOCIATE REGIONAL ADMINISTRATOR DIV OF MEDICAID & CHILDREN'S HEALTH		23. REMARKS: * Pen + Ink Change per state's E-mail dated 9/16/04	

Attachment to Blocks 8 & 9 to CMS Form 179

Transmittal No. TN 04-11, Amendment No. 675

**Number of the
Plan Section or Attachment**

**Number of the Superseded
Plan Section or Attachment**

Basic Plan

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Basic Plan

Page 53 (TN 88-1)
Page 53a (TN 88-1)
New
New
New
New

Attachment 4.17-A

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New
New
New
New
New
New

Revision: HCFA-PM-95-3 (MB)
May 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: TEXAS

Citation

42 CFR 433.36(c)
1902(a)(18) and
1917(a) and (b) of
the Act

4.17 Liens and Adjustments or Recoveries

(a) Liens

_____ The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFR 433.36(c)-(g) with respect to any lien imposed against the property of an individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

_____ The State imposes liens on real property on account of benefits incorrectly paid.

_____ The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A (NOTE: If the State indicates in its State Plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and procedures, and due process requirements.)

_____ The State imposes liens on both real and personal property of an individual after the individual's death.

SUPERSEDES: IN- 88-01

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(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

___ Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

- (2) ___ The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B)(even if it does not impose those liens).

- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, including ICF-MR facilities, home and community based services, and related hospital and prescription drug services.

___ In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

SUPERSEDES: TN- 88-01

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(5) ☐ The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long-term care insurance policy as provided for in Attachment 2.6-A, Supplement 8b.

☐ The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long-term care services provided on behalf of the individual. (States other than California, Connecticut, Indiana, Iowa, and New York which provide long term care insurance policy-based asset or resource disregard must select this entry. These five States may either check this entry or one of the following entries.)

☐ The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long-term care services provided on behalf of the individual.

☒ X The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long-term care services provided on behalf of the individual to the extent described below:

A Medicaid Estate Recovery claim may be filed against the estate of a deceased Medicaid recipient for covered Medicaid services when the recipient:

- (1) Was aged 55 years or older at the time the services were received; and
- (2) Applied for and was approved, and accessed covered long-term care services on or after the effective date of these rules.

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(c) Adjustments or Recoveries: Limitations

The State complies with the requirements of section 1917 (b)(2) of the Act and regulations at 42 CFR §433.36(h)-(i).

- (1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care, the State will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
 - (a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
 - (b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

SUPERSEDES: NONE - NEW PAGE

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(d) ATTACHMENT 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36(d).
- (2) Specifies the criteria by which a son or a daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines the following terms:
 - estate (at minimum, estate as defined under State probate law). Except for the grandfathered States listed in Section 4.17(b)(3), if the State provides a disregard for assets or resources for any individual who received or is entitled to receive benefits under a long term care insurance policy, the definition of estate must include all real, personal property, and assets of an individual (including any property or assets in which the individual had any legal title or interest at the time of death to the extent of the interest and also including the assets conveyed through devices such as joint tenancy, life estate, living trust, or another arrangement),
 - individual's home
 - equity interest in the home,
 - residing in the home for at least 1 or 2 years,
 - on a continuous,
 - discharge from the medical institution and return home,
 - lawfully residing.

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- (4) Describe the standards and procedures for waiving estate recovery when it would cause undue hardship.
- (5) Defines when adjustment or recovery is not cost effective. Defines cost-effective and includes methodology or thresholds used to determine cost-effectiveness.
- (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

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LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

Not applicable since Texas is not pursuing liens.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

Not applicable since Texas is not pursuing liens.

3. The State defines the terms below as follows:

Estate – The real and personal property of a decedent, both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions and substitutions that is included in the definition of the probate estate in Section 3(1) of the Texas Probate Code.

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4. The State defines undue hardship as follows:

373.209 Undue Hardship Waivers

MERP will not recover from estates if recovery would cause undue hardship. An undue hardship waiver request form will be provided with the Notice of Intent to File Claim.

(a) An undue hardship does not exist solely because:

- (1) Recovery would prevent heirs or legatees from receiving an anticipated inheritance; or,
- (2) The circumstances giving rise to the hardship were created by, or are the result of estate planning methods under which assets were sheltered or divested in order to avoid estate recovery.

(b) Undue hardship waivers include:

- (1) The estate property subject to recovery has been the site of the operation of a family business, farm, or ranch at that location for at least 12 months prior to the death of the decedent; is the primary income producing asset of heirs and legatees and produces 50 percent or more of their livelihood, and recovery by the State would affect the property and result in the heirs or legatees losing their primary source of income;
- (2) One or more siblings or direct descendants of the deceased person (lineal heir(s), such as children and grandchildren) will inherit the homestead of the deceased Medicaid recipient, provided that each sibling or lineal heir inheriting the homestead has family income below 300 percent of the federal poverty level.

“Family” means that the department will consider each heir separately. Heirs will not be aggregated into one family unless the heirs are minor children who are siblings. In the case of an adult heir, his or her family will be limited to the heir, the heir’s spouse, the heir’s minor children, and the spouse’s minor

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children residing in the household. In the case of the heir who is a minor, the heir's family will be the heir, his or her parent(s) or stepparent residing in the household, and the heir's minor siblings residing in the household, including half-, step-, and adoptive siblings.

"300 percent of the federal poverty level" is a gross income test; no exclusions or deductions are allowed.

When there are multiple heirs and not all heirs qualify for the hardship waiver, only that percentage of the homestead that corresponds to the qualifying heir or heirs' share of the homestead will be exempt from Medicaid recovery.

- (3) Heirs and legatees would become eligible for public and/or medical assistance if a recovery claim were made;
 (4) Allowing one or more survivors to receive the estate will enable him or her or them to discontinue eligibility for public and/or medical assistance; or,
 (5) Other compelling reasons, for example:

- (a) a sibling or parent of the recipient who has an equity interest in the recipient's home and who was residing in such home for a period of at least (1) year immediately before the date of the recipient's admission to the institution and who has been residing in the home on a continuous basis; or
 (b) a married adult child or grandchild of the recipient who was residing in the recipient's home for a period of at least (2) years immediately before the date of the recipient's admission to the institution and who establishes by a preponderance of evidence that he/she provided necessary care to the recipient, and the care she/he provided allowed the recipient to remain at home rather than in the institution..

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5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

HHSC has exclusive authority to waive its claim and grant undue hardship waivers as determined by the HHSC MERP program on an individual case-by-case basis. An undue hardship waiver determination will be made by MERP within 30 days of the receipt of an undue hardship waiver request form and all required necessary supporting documents by MERP.

Undue hardship waiver request forms shall be submitted to the following address:
MERP, P.O. Box 13247, Austin, Texas, 78711.

6. The state defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

Recovery will not be cost-effective when the value of the estate is \$10,000 or less, or the cost involved in the sale of the property would be equal to or greater than the value of the property.

On average, a funeral in Texas costs approximately \$10,000. This is just one of six classes of claims under Texas Probate Code that precede estate recovery. Others include estate preservation, safekeeping and management; tax liens and second mortgages; and state taxes, penalties and interests thereon. Given the precedence of these claims and their potential costs, the state would incur administrative costs for estates valued at \$10,000 or less, but have little chance of regaining those costs.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

The Medicaid Estate Recovery Program (MERP) will provide written notice of the estate recovery program provisions from the time of initial application through certification to Medicaid recipients. Medicaid long-term services provided before the effective dates of this amendment are not covered services for the purpose of the MERP.

Written notice will be provided to the following, if known by MERP at the time of notice:

- (1) The recipient:

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- (2) The recipient's guardian of the person, if any, guardian of the estate, if any, or guardian of the person and estate, if any, provided that the name and address of the guardian or guardians are known by MERP; or
- (3) The recipient's attorney in fact under a durable power of attorney if the name and address of the attorney in fact are known by the MERP; or
- (4) The recipient's agent under a medical power of attorney if the name and address of the attorney in fact are known by the MERP; or

If none of the above are known, then family members acting on behalf of the recipient provided that the name and address of those family members acting on behalf of the recipient are known by MERP.

The written notice provided by the MERP to those listed above will contain the following information:

- (1) Description of Medicaid Estate Recovery Program (MERP) provisions;
- (2) Information as to covered Medicaid long-term care services subject to estate recovery;
- (3) Claim procedures as required in state statutes (Section 322 of the Texas Probate Code);
- (4) Information as to applicable "look-back" penalties for transfers of property for less than market value during the 36 months prior to applying for Medicaid benefits;
- (5) Description of hardship exemptions and related procedures in regard to any recovery claim;
- (6) Information concerning the MERP Notice of Intent to File a Claim and Medicaid Estate Recovery Claim upon the death of a Medicaid recipient.

MERP will, within 30 days of the notification of the death of a Medicaid recipient, provide a Notice of Intent to File a Claim, to the following:

- (1) Estate representative;
- (2) Recipient's guardian of the person, if any, guardian of the estate, if any, or guardian of the person and estate, if any, provided that the name and address of the guardian or guardians are known by MERP;
- (3) Recipient's attorney in fact under a durable power of attorney if the name and address of the attorney in fact are known by MERP; or
- (4) Recipient's agent under a medical power of attorney if the name and address of the attorney in fact are known by MERP; or,
- (5) If none of the above are known, then family members who have acted on behalf of the recipient provided that the name and address of those family members who have acted on behalf of the recipient are known by MERP.

SUPERSEDES. NONE - NEW PAGE

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Written notice will be provided to those listed above of MERP's intent to file an estate recovery claim against the estate of a deceased Medicaid recipient for covered services. The notice will include the following:

- (1) A program overview;
- (2) A questionnaire that seeks to determine whether the deceased recipient had:
 - a. A surviving spouse; or
 - b. A surviving child under age 21; or
 - c. A surviving child who is blind or disabled as defined by 42 United States Code §1382c; or
 - d. An unmarried adult child residing continuously in the decedent's homestead for at least one year prior to the time of the Medicaid recipients' death.

An undue hardship waiver request form is due to MERP within 30 days of the date of the Notice of Intent to File a Claim. The Notice of Intent to File a Claim will state the date that MERP received notification of the death of a Medicaid recipient and the source of the death notification of the Medicaid recipient.

MERP will not recover from estates if recovery would cause undue hardship. An undue hardship waiver request form will be provided with the Notice of Intent to File Claim.

HHSC has exclusive authority to waive its claim and grant undue hardship waivers as determined by the HHSC MERP program on an individual case-by-case basis. An undue hardship waiver determination will be made by MERP within 30 days of the receipt of an undue hardship waiver request form and all required necessary supporting documents by MERP.

An applicant may request a review of the denial of an undue hardship waiver within 30 days of receiving notice of the denial from MERP. The review is an informal process and is not a hearing. All requests for a review of the denial of an undue hardship waiver request must be made in writing.

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